

HOUSE BILL REPORT

HB 1707

As Reported by House Committee On:
Judiciary

Title: An act relating to actions by insurance companies against violators.

Brief Description: Establishing provisions for actions by insurance companies against violators.

Sponsors: Representatives Kirby, Shea, Rodne, Pettigrew, Roach and Kelley.

Brief History:

Committee Activity:

Judiciary: 2/11/09, 2/12/09 [DPS].

Brief Summary of Substitute Bill

- Creates a cause of action for an insurance company to recover compensatory damages, plus all reasonable investigation and litigation expenses and reasonable attorneys' fees, when an insurance company is a victim of a crime.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Pedersen, Chair; Goodman, Vice Chair; Rodne, Ranking Minority Member; Shea, Assistant Ranking Minority Member; Flannigan, Kelley, Kirby, Ormsby, Roberts, Ross and Warnick.

Staff: Courtney Barnes (786-7194)

Background:

In 2006 the Legislature created an insurance fraud program administered by the Office of the Insurance Commissioner (OIC). The insurance fraud program identifies and investigates criminal organizations and individuals engaged in fraud schemes that target the insurance industry. The OIC insurance fraud program is administered by the Insurance Commissioner's Special Investigation Unit (SIU).

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Many of the cases investigated by the SIU are referred by insurance companies and other law enforcement agencies. By statute, insurers are mandated to report fraudulent activity and are provided with immunity from liability for reporting. When the SIU has gathered enough evidence to warrant a criminal prosecution, the SIU gives the case to a local prosecutor or the Office of the Attorney General for prosecution.

Under the insurance fraud program provisions, an insurance company is entitled to restitution in a criminal prosecution for any crime where an insurance company is a victim. Restitution is governed by the Sentencing Reform Act. Restitution is based on easily ascertainable damages for injury to or loss of property, actual expenses incurred for treatment for injury to persons, and lost wages resulting from injury. The amount of restitution may not exceed twice the amount of the offender's gain or the victim's loss from the commission of a crime. Under Washington case law, restitution does not preclude civil remedies.

Summary of Substitute Bill:

An insurance company that is a victim of a criminal action has a cause of action against the defendant convicted of such criminal action. An insurance company may recover compensatory damages, plus all reasonable investigation and litigation expenses, including reasonable attorneys' fees.

Substitute Bill Compared to Original Bill:

The substitute bill removes all provisions related to allowing the OIC to join in an action against a defendant. The substitute bill removes the six-year statute of limitations on claims brought by insurance companies. The substitute bill does not permit treble damages when a court determines that a defendant has engaged in a pattern of violations against an insurance company.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) The proposed substitute is the product of collaboration with the proponents of this legislation. The proposed substitute bill should be reported out of committee.

(In support with amendments) Since the insurance fraud program was created, insurance companies have not been able to recover investigation and litigation expenses against a defendant when they have been a victim of the crime. Trial judges have not allowed these

expenses because they are not specifically authorized by statute. Insurance companies should be entitled to recover investigation and litigation expenses, including attorneys' fees. The proposed substitute bill makes it clear that insurance companies are entitled to this recovery.

(Opposed) None.

Persons Testifying: (In support) Representative Kirby, prime sponsor.

(In support with amendments) Jessica Duble-Harbin, Farmers Insurance; Jean Leonard, State Farm Insurance; and James Curry, American Insurance Association.

(Opposed) None.

Persons Signed In To Testify But Not Testifying: None.